Supreme Court, U.S.
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No. 87-1517

In The

Supreme Court of the United States

October Term, 1987

ST. JOHNS COUNTY, FLORIDA,

Petitioner,

v.

SYLVESTER LUCAS,

Respondent,

and

FRANCIS O'LOUGHLIN, *et al.*,

Respondents.

PASCO COUNTY BOARD OF COUNTY COMMISSIONERS, PASCO COUNTY, FLORIDA,

Amicus Curiae.

AMICUS CURIAE BRIEF OF PASCO COUNTY, FLORIDA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a county, through its governing body, can be held strictly liable under 42 U.S.C. § 1983 for the unconstitutional act of the county sheriff in discharging one of his deputies, where the sheriff, as an independent constitutional officer, derives his policy-making authority exclusively from state law and not an act of delegation on the part of the county.

PARTIES TO PROCEEDING IN COURT BELOW

The petitioner in this proceeding is St. Johns County, Florida, through its Board of County Commissioners. The County was a defendant in the court below. The principal respondent is Sylvester Lucas, plaintiff below, a former deputy sheriff for the St. Johns County Sheriff's Office. Additional respondents are Francis O'Loughlin, former sheriff for St. Johns County and Ronald Janson, a former captain for the St. Johns County Sheriff's Office, both of whom were defendants below.

Amicus Curiae, Pasco County Board of County Commissioners is interested in the outcome of this litigation. Its interests are similarly aligned with St. Johns County.

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AMICUS CURIAE BRIEF OF PASCO COUNTY, FLORIDA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Amicus Curiae, Pasco County Board of County Commissioners, Pasco County, Florida, respectfully prays that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Eleventh Circuit entered in this action on November 2, 1987.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Pasco County relies upon the statutes set forth in Petitioner's brief, and in addition, rely on the following:

Section 125.01(1)(b):

> (1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:
>
> (b) Provide for the prosecution and defense of legal causes on behalf of the county or state and retain counsel and set the compensation.

Section 30.15 *Florida Statutes* (1987) states as follows:

> Sheriffs in their respective counties in person or by deputy shall:
>
> (1) Execute all process of the Supreme Court, Circuit Courts, County Courts, and Boards of County Commissioners of this State, to be executed in their counties;
>
> (2) Execute such other writs, processes, warrants, and other papers directed to them, as may come to their hands to be executed in their counties;
>
> (3) Attend all terms of the Circuit Court and County Court held in their counties;
>
> (4) Attend all meetings and execute all orders, of the Boards of County Commissioners of their counties; for which services they shall receive such compensation, out of the County treasury, as said Boards may deem proper;
>
> (5) Be conservators of the peace in their counties;

(6) Supress tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary;

(7) Apprehend, without warrant, any person disturbing the peace, and carry him before the proper judicial officer that further proceedings may be had against him according to law;

(8) Have authority to raise the power of the County and command any person to assist them, when necessary, in the execution of the duties of their office; and whoever, not being physically incompetent, refuses or neglects to render such assistance, shall be punished by imprisonment in jail not exceeding one (1) year, or by fine not exceeding Five Hundred Dollars ($500.00);

(9) Be ex officio, timber agents for their counties; and

(10) Perform such other duties as may be imposed upon them by law.

———o———

STATEMENT OF INTEREST

The interest of the Board of County Commissioners of Pasco County is similarly aligned with the interest of the Board of County Commissioners of St. Johns County. Like St. Johns County, Pasco County Board of County Commissioners is a separate constitutional entity from the Sheriff of Pasco County. In Florida, the Sheriff's Office as a matter of state law is not controlled by or subject to the authority of the Board of County Commissioners. To hold the Board of County Commissioners liable for the actions of an official over whom the Board has

no control, will substantially affect the budget of the Board of County Commissioners.

The purpose of this Amicus brief is to indicate to this Court the significant impact the decision of the Eleventh Circuit Court has had and will continue to have on the Board of County Commissioners of Pasco County who has as a matter of law no control over or authority to direct policies of the Sheriff's Office.

This Amicus brief is filed pursuant to Rule 36.4 *Supreme Court Rules.* Pasco County is a political subdivision in the State of Florida. The County Attorney's Office is the representative of the Board of County Commissioners, which is authorized pursuant to *Florida Statutes* 125.01 (1987) to prosecute and defend actions in the name of Pasco County.

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SUMMARY OF ARGUMENT

The decision of the Eleventh Circuit Court is in direct conflict with the recently decided case of *City of St. Louis v. Praprotnik,* — U.S. —, — S.Ct. —, 56 U.S.L.W. 4201 (March 2, 1988) as well as *Pembaur v. City of Cincinnati,* 475 U.S. 469, 106 S.Ct. 1292 (1986), and *Monell v. Department of Social Services,* 436 U.S. 658, 98 S.Ct. 2018 (1978), in holding that a separate and distinct political subdivision is liable for a differing constitutional officer under a theory of respondeat superior. The Sheriff of St. Johns County is the final policymaker for his office as an executive of the State of Florida. The Board of County Commissioners is a separate and distinct entity

exercising no control or authority over the Sheriff. To hold the Board liable for actions of the Sheriff will be similar to holding AT & T liable for the actions of General Telephone. They are separate entities and the actions of one cannot come to rest on the heads of another.

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ARGUMENT

Although the landmark case of *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 98 S.Ct. 2018 (1978) held that a local governmental entity is a person within the meaning of 42 U.S.C. § 1983 actions, the *Monell* Court specifically rejected the concept of governmental respondeat superior liability.

> "We conclude, therefore, that a local government may not be sued under Section 1983 for an injury inflicted solely by its employees or agents. Instead it is when the execution of a government's policy or custom, whether made by its law makers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under Section 1983." *Id.* at 694-695.

Since the *Monell* case, the Federal courts have struggled with the meaning of "actions which fairly represent governmental authority." For instance, in South Carolina, a county was deemed not liable for the actions of an elected sheriff who was by statute, solely responsible for his and his deputies' actions, *Allen v. Fidelity Deposit Company of Maryland*, 515 F. Supp. 1185 (D.C. S.C. 1981), *aff'd* 694 F.2d 716 (4th Cir. 1982). On the other

hand, similar facts led the Michigan Federal Court to a different conclusion, *Gaborek v. Rosena*, 599 F. Supp. 1476 (WD Mich. 1984). In the recent United States Supreme Court case of *City of St. Louis v. James H. Praprotnik*, — U.S. —, — S.Ct. —, 56 U.S.L.W. 4201 (March 2, 1988), this Court specifically concluded that state law is the determining factor in the question of who has policymaking authority.

> "(Thus) the identification of policymaking officials is not a question of federal law and is not a question of fact in the usual sense. The states have extremely wide latitude in determining the form that local governments take and local preferences have led to a profusion of distinct forms. Among the many kinds of municipal corporations, political subdivisions, and special districts of all sorts, one may expect to find a rich variety of ways in which the power of government is distributed among a host of different officials and official bodies . . . We can be confident that state law (which may include valid local ordinances and regulations) will always direct a court to some official or body that has the responsibility for making law or setting policy in any given area of a local government's business."

In *Lucas v. O'Loughlin*, the Eleventh Circuit ignored the State of Florida's constitution and statutes and held that the actions of the Sheriff in terminating his deputy were the actions of St. Johns' Board of County Commissioners and accordingly the Board was erroneously dismissed from the lawsuit. Although the Eleventh Circuit correctly recognized that the Sheriff was a final policymaker, it failed to recognize that the policymaking was for the Office of the Sheriff of St. Johns County and not as a representative of the Board of County Commis-

sioners of St. Johns County. A thorough review of the state statutes, Constitution and case law in Florida will clearly point this Court to the conclusion that a Board of County Commissioners in Florida cannot be liable for the actions of a Sheriff of that same county.

Under Florida law, the office of the Sheriff is an elected common law and constitutional office, *Murphy v. Mack*, 358 So.2d 822 (Fla. 1978); *Fla. Const.* Art. VIII Section 1(d). Although the Sheriff is a county officer, he represents the executive and administrative power of the State of Florida within his county, *Blackburn v. Brorein*, 70 So.2d 293 (Fla. 1954). The sheriff is required to perform such duties as may be imposed on him by law, § 30.15 *Florida Statutes* (1987). It is the express legislative policy to preserve the independence of the Sheriff as the constitutional officer of the State of Florida concerning the selection, employment, discharge and compensation of personnel, § 30.53 *Florida Statutes* (1987). Accordingly, the Sheriff is authorized to appoint deputies and has absolute control over the selection and retention of those deputies, *Sikes v. Boone*, 562 F. Supp. 74 (ND Fla. 1983); *Szell v. LaMarr*, 414 So.2d 266 (Fla. 5th DCA 1982). Deputy sheriffs are not employees of a non-charter county, *Fraternal Order of Police Lodge 92 v. Freeman*, 372 So.2d 945, *cert. denied*, 383 So.2d 1194 (Fla. 1979). The sheriff is responsible for the manner in which his deputies discharge their official duties and for the neglect and default of his deputies in the execution of their office, *Swensen v. Cahoon*, 151 So. 203 (Fla. 1933); § 30.07 *Florida Statutes* (1987). Non-charter counties have no authority to suspend, remove, or reinstate sheriffs. See *Florida Constitution* Art. IV, Section 7(a); *State ex rel Kelly v. Sullivan*,

52 So.2d 422 (Florida 1951); *State ex rel Hatton v. Joughin,* 138 So. 392 (rehearing denied) 145 So. 174 (Florida 1931).

The only control St. Johns County, as an entity acting by and through its Board of County Commissioners, exercises over the Sheriff is to review and amend, modify, increase or reduce the sheriff's proposed budget, Section 30.49(4) *Florida Statutes* (1987). However, this authority is not final. Any change by the Board of County Commissioners is subject to appeal and final determination by the Governor and Cabinet, of the State of Florida, Section 30.49(4) *Florida Statutes* (1987). Thus, Pasco County exercises no control or authority, indirect or otherwise, over the duties, responsibilities, conduct and method of operation of the Sheriff or his deputies including their hiring, disciplining, training or firing, or their internal arrest and detention procedures, policies and practices.

Since the Board of County Commissioners of St. Johns County and likewise, Pasco County, is unable to institute any official policy and control over the Sheriff through that policy, to hold the Board of County Commissioners liable in the State of Florida for the actions of a separate elected official, would be to adopt a policy of respondeat superior in Section 1983 civil rights violation actions. As clearly indicated by this Court in *Praprotnik, supra* a municipality may not be held liable for § 1983 violations on a theory of respondeat superior. Because of the complete lack of control one constitutional entity in Florida has over another, the Court's decision below violates the principles laid out in *Monell supra* and highlighted in *Praprotnik supra.* It is apparent from state

law that Pasco County Board of County Commissioners and St. Johns County Board of County Commissioners has no final policy making authority over the Sheriff's officials or the Sheriff himself and therefore, should not be held accountable for the conduct of the Sheriff.

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CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner Pasco County Board of County Commissioners respectfully requests that a writ of certiorari be issued to review the opinion of the United States Court of Appeals of the Eleventh Circuit as being in direct conflict with the case of *City of St. Louis v. Praprotnik*, — U.S. —, — S.Ct. —, 56 U.S. Law Week 4201 (March 2, 1988).

Respectfully submitted,

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